THE HON'BLE SRI JUSTICE B. PRAKASH RAO

AND

THE HON'BLE SRI JUSTICE D.S.R. VARMA

WRIT PETITION No.2799 of 2002

Date: 19.09.2007

Between:

D. Manik Shanker, S/o D. Siddaiah.

.. Petitioner

And

1. State of Andhra Pradesh, rep. By the Mandal Revenue Officer, Nampally Mandal, Hyderabad.
2. The Assistant Endowments Commissioner, Tilak Road, Boggulakunta, Hyderabad.

.. Respondents.

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ORDER: (Per Hon'ble Sri Justice B. Prakash Rao)

The petitioner herein, who has been declared as a land grabber as per the judgment dated 05.12.2001 in L.G.C.No.6 of 1998 on the file of the Special Court under the A.P. Land Grabbing (Prohibition) Act at Hyderabad, filed this Writ Petition *inter alia* seeking a writ of Certiorari assailing the said order as illegal, bad and void.

Heard Sri Vedula Venkataramana, learned counsel appearing for the petitioner and the learned Government Pleader for Assignments appearing on behalf of the respondents herein.

Briefly stated the facts of the case are that the first respondent has filed the present application under Section 8 (1) of the A.P. Land Grabbing (Prohibition) Act, 1982 (for brevity 'the Act') to declare the petitioner as land grabber and to evict him for delivery of possession and also for compensation of Rs.13,50,000/- (Rupees thirteen lakh fifty thousand only) for wrongful possession and later the second respondent was added as party petitioner as per the orders in I.A.

No.390 of 2001, dated 20.06.2001 to the application which has already been filed by the first respondent.

As per the allegations contained in the concise statement of facts and in the very application in its entirety, it was averred that as per the town survey record, the land bearing T.S.No.74, Block 'J' Ward No.50, of Nampally village, Hyderabad, which is classified as gap from C. Siddaiah, was unauthorisedly occupied by the petitioner to an extent of 275.5 sq. yards (231.84 sq. mts.) of Government land in T.S.No.74, Block No.J, Ward No.50 situated in Osman Gunj, Nampally Village and constructed basement structures on the Government land. Hence, the petitioner is liable to be evicted. After following the due procedure as contemplated under the Act and service of notice, the petitioner contested the said case setting up his own title to the effect that he is the absolute owner and possessor of the land admeasuring 591 sq.yds. inside Osmangunj, Hyderabad, which was initially belonged to HEH the Nizam. Nizam VII constructed a Mussafirkhana-e-Aam in a portion of said land inside Osmangunj, Hyderabad and the remaining land was in possession of Nizam. The said property was recognized as private property of HEH the Nizam as evident from the entry made in the Blue Book showing an extent of 2270.73 sq.yds as private immovable property of Nizam. Out of the said extent, an extent of 700

sq.yds. now covered by TS No.74, was delivered to the petitioner by Mukarram Jah Trust and accordingly there was settlement by the said Trust in his favour on 15.06.1995 and there was a compromise also duly recorded between him and the said Trust in O.S.No.997 of 1995 on the file of the Court of IV Additional Judge, City Civil Court, Hyderabad, dated 02.11.1995. Thus, he has been in possession all along for the last more than 30 years and prior thereto. However, in regard to the adjacent property, Mussafirkhana-e-Aam constructed by Nizam VII was being managed by Dharmasala Committee and it was leased out in the year 1962 to an Agricultural Market Committee, Hyderabad. The said property bears Municipal No.15-2-756. The said Committee filed eviction petitions in R.C.Nos.862 and 963 of 1995 on the file of the III Additional Rent Controller, Hyderabad for eviction of the Agricultural Market Committee, which was allowed and in execution in E.P.Nos.40 and 41 of 1997, a portion of his property belonged to the petitioner was also included in the said petitions. Therefore, the petitioner has filed a claim petition in E.A.No.127 of 1997 where there was a compromise whereby the petitioner agreed to forego an extent of 109 sq.yds and thus, the remaining area to an extent of 591 sq.yds. continued to be with the petitioner herein as an absolute owner and possessor. The said property was already assessed to the municipal tax by the Municipal Corporation in he year

1997 and the petitioner has been paying the taxes. Therefore, the claim as made by the respondents that the petitioner has illegally occupied the property in dispute and is a land grabber, is liable to be dismissed.

During the course of enquiry and after framing the issues, both the sides let in their evidence. On behalf of the respondents, P.Ws.1 and 2 were examined and Exs.A.1 to A.4 were marked whereas on behalf of the petitioner herein, R.W.1 was examined and Exs.B.1 to B.9 were marked. On consideration thereof, the Special Court did not accept the case of the petitioner and held that he is a land grabber and thus liable to be evicted. Hence, the Writ Petition.

Sri Vedula Venkataramana, learned counsel appearing for the petitioner submitted that the very case as has been filed and framed is hopelessly not maintainable nor is in terms of any act of land grabbing by the petitioner. Neither there exists any foundation thereof nor the same has been substantiated and therefore, the Special Court was totally erroneous in coming to the conclusion that the petitioner is a land grabber.

The learned Government Pleader for Assignments appearing on behalf of the respondents sought to sustain the findings and having regard to the findings of fact as arrived at by the Special Court rejecting

the claim of the petitioner, this Court cannot go into the same.

With these and other contentions as urged on behalf of both the sides, the points that arise for consideration on the facts and circumstances of the case are firstly whether the petition filed by the respondents against the petitioner to declare him as a land grabber is maintainable under the provisions of the Act and secondly whether the petitioner is a land grabber ?

Coming to the first aspect, it is curious to note that the respondents herein have filed the present application under Section 8(1) of the Act in the year 1998 to declare the petitioner as a land grabber. In the format as prescribed to file such an application, in column No.5, which contemplates the address of the respondent, it was mentioned as R/o Siddaiah (GPA Holder) H.No.16-11-20/4/B, Saleem Nagar, Malakpet, Hyderabad. Further, the concise statement as stated, reiterates as follows:

> "This is a land grabbing case against Sri/Smt. D.M. Shankar Reddy, S/o Siddaiah, D/o, W/o P. Siddaiah, 16-11-20/4, Saleemnagar Colony, Hyderabad when he was illegally grabbed the Govt. Block No.J of Nampally village, Nampally Mandal.
>
> In the Survey record (prior to Survey) in
>
> As per the town survey record the land bearing Sy.No. T.S.No.74, Block No.J, Ward No.50, of Nampally village i.e., classified as gap from C.Siddaiah.
>
> The respondent has unauthorisedly occupied on of 275.5

> square yards, of 231.84 sq.mtrs. of Govt. land in the T.C.No.74 Block No.J, Ward NO.50 situated in Osman Gunj, Nampally village, Nampally Mandal and constructed basement structures on the Govt. land.
>
> The cause of action for this prove in the year 1997 and the respondent has constructed basement.
>
> The respondent is liable to be proceeded under the ……(p) Act, 1997."

From the above, it is quite evident that no proper attention has been paid nor any care is taken to cull out proper facts nor all the correct facts in the concise statement of facts. The petitioner is described as Sri/Smt. D.M. Shankar Reddy, S/o Siddiah, D/o. W/o P. Siddaiah, represented by GPA Holder and S/o Siddaiah and again s/o, r/o Malakpet. Further from the aforesaid contents as against him, it is shown as Sri/Smt. D.M. Shankar Reddy, S/o Siddaiah, D/o. W/o P. Siddaiah. Therefore, apparently the respondents are not fully aware of the details or the particulars of the petitioner herein against whom the relief is sought. The entire case squarely rests on the town survey record as mentioned above. Except the same, no other document is forthcoming on behalf of the respondents herein. It is now already held that town survey record would not constitute or confer any right, title or interest what-so-ever. That apart, as stated above, the very application filed by the respondents herein is totally bereft of proper pleadings in detail, which is very fatal as has been held in *Mohd. Siddiq Ali Khan v.*

Shahsun Finance Limited[1]. Even otherwise, on a reading of the plea set forth on behalf of the petitioner principally traces his title on his own in pursuance of a settlement deed with Mukarram Jah Trust on 16.05.1995 and a compromise was recorded in O.S. 997 of 1995 on the file of the Court of IV Additional Judge, City Civil Court, Hyderabad, dated 02.11.1995, further another compromise in the execution petition in E.P.No.40 of 1997 in a claim petition. The fact that the property was assessed to municipal tax and the same is being paid is not seriously in dispute. From this itself, it shows that the occupation of the petitioner in respect of the said property is not with any knowledge that it belongs to the Government. On the face of it, neither constitutes it as an act of land grabbing nor would make his possession illegal in any manner. All these aspects have not been totally given a go-by by the Special Court except placing reliance on the mere entry that it shows 'G', the special Court sought to treat it as land belonging to the Government, and upheld the claim. Having regard to such long possession and also the claim of title themselves in their own way, the case even on the face of it would not fall well within the parameters, scope and jurisdiction as conferred under the provisions of the Act as held by this Court in W.P. No.15579 of 2002 of which Justice

B. Prakash Rao is one of the parties. Thus, on a totality of the

circumstances and due to lack of the very basic pleadings and the failure to establish their ownership and title in their favour by any other valid material or documents of title and further having regard to long possession as evident from the record produced on behalf of the petitioner, the respondents have failed to make out any case of act of land grabbing against the petitioner. Even otherwise, the facts would amply to show that it does not fit in the parameters of the act of land grabbing to warrant any exercise of powers by the Court created under the said Act. Hence, in the aforesaid circumstances, the Writ Petition is allowed.

The Writ Petition is accordingly allowed and the judgment dated 05.12.2001 in L.G.C.No.6 of 1998 on the file of the Special Court under the A.P. Land Grabbing (Prohibition) Act at Hyderabad, is set aside. There shall be no order as to costs.

B. PRAKASH RAO, J

D.S.R. VARMA, J

19th September 2007.
Chvn.

[1] 2005 (2) ALD 675